

REMARKS

Claims 1-8 are pending in this application. By this Amendment, claims 1-3 and 5-7 are amended, and claim 8 is added. No new matter is added. Support for the amendments and the added claim is provided in the specification, for example, on page 3, lines 22-28, page 6, lines 2-6 and 26-30, page 7, lines 8-9, and page 8, lines 23-26, and in the claims, as originally filed. A Request for Continued Examination is attached. Reconsideration of the application in view of the above amendments and the following remarks is respectfully requested.

The Office Action rejects claims 1 and 3-6 under 35 U.S.C. §103(a) over U.S. Patent No. 5,417,258 to Privas in view of U.S. Patent No. 6,000,405 to De Laforcade; and rejects claims 2 and 7 under 35 U.S.C. §103(a) over U.S. Patent No. 4,322,020 to Stone in view of De Laforcade. These rejections are respectfully traversed.

Privas teaches a rechargeable device for spraying a fluid comprising a tank of fluid to be sprayed, a spray pump mounted on the tank, and an actuator head that includes automation actuation means for activating the pump (see, e.g., col. 1, lines 9-12). The Privas device also includes a pushbutton and actuator means connected to an actuator rod adapted to press against the pushbutton when a solenoid is activated (see, e.g., col. 7, lines 24-44). The Privas device releases a fluid under pressure (see, e.g., col. 9, lines 12-16).

Stone teaches an invertible pump sprayer having a rigid outer protective container and an inner collapsible container (col. 3, lines 13-21 and col. 4, lines 35-36).

De Laforcade teaches a dispensing head for dispensing product from a reservoir comprising a movable portion connected to a body via a hinge that permits pivotal movement of the movable portion about an axis of the hinge. The De Laforcade dispensing head releases a fluid from an aerosol can into a hollow activator having an outlet, by operation of a pump and valve actuated upon pivotal movement of the movable portion.

Independent claims 1 and 2 recite, among other features, a container with a comb for applying a substance comprising a hollow comb having a shaft and one or more discharge orifices, and a stem extending from the shaft into a pump cylinder, the stem having a lower end portion to which a cylindrical piston is provided, the stem, the cylindrical piston, and the comb being biased upwardly and being vertically movable with respect to a laminated container body and a cap member, wherein the shaft has a depression rod for depressing the stem, the cylindrical piston and the comb. Any permissible combination of Privas, Stone and De Laforcade cannot reasonably be considered have suggested this combination of features.

The Office Action provides the conclusory assertions, on pages 2 and 3, respectively, without any supporting findings of fact, that each of Privas and Stone discloses the invention essentially as claimed except for a hollow comb having a shaft and one or a plurality of discharge orifices. However, there is nothing in Privas or Stone that can reasonably be considered to correspond to the features of a stem, a cylindrical piston, and a comb being biased upwardly and being vertically movable with respect to a laminated container body and a cap member, as positively recited in independent claims 1 and 2. In this regard, the Office Action fails to give plain meaning to all of the features positively recited in independent claims 1 and 2, as required under MPEP §2111.01, such as, for example the stem and cylindrical piston being biased upwardly and being vertically movable, the stem extending from a shaft of a hollow comb. In this regard, the Office Action fails to consider all claim limitations in evaluating obviousness, as required under MPEP §2143.03, and additionally because any combination of Privas, Stone or La Forcade would not have suggested a container with a comb that includes a stem, a cylindrical piston, and a comb being biased upwardly and being vertically movable with respect to a laminated container body and a cap member by a depression rod, as positively recited in independent claims 1 and 2.

With regard to the combinability of the applied references, the Office Action provides merely a conclusory analysis and thus fails to provide an adequate showing. Without any factual support, the Office Action asserts, on pages 2 and 3, respectively, conclusory statements regarding the motivation to combine each of the combination of Privas and De Laforcade and the combination of Stone and De Laforcade, as, "in order to provide better, more even application of hair care product." On its face, this simple assertion does not provide sufficient rationale according to current Patent Office guidance to prove that references are predictably combinable in the manner suggested by the Office Action with any reasonable expectation of success.

The Federal Circuit has consistently reaffirmed its prior holdings, and most recently the U.S. Supreme Court cited the Federal Circuit with approval, asserting that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007), citing *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006). This standard is not met here as, even if the articulated reasoning has any merit at all, there is certainly no rational underpinning for the asserted conclusion. It is insufficient to provide a conclusory statement, as provided on pages 3 and 4 of the Office Action, that it would have been obvious to one skilled in the art to form a cap-like member of Privas or Stone with a hollow comb having a shaft and discharge orifice of De Laforcade, without addressing the structural differences between the asserted features of the applied references and those recited in the claims, or otherwise providing a rational underpinning for the asserted combinations.

There would have not only been no apparent desirability in making the asserted combinations, but further, even if elements of Privas, Stone and De Laforcade were considered for combination, there would have been no reasonable expectation of success in

the combination, and the results of the claimed invention would not have been predictable to one of ordinary skill in the art (MPEP §§2143, 2143.01(III) and 2143.02, citing *KSR* and other pertinent cases). The mere fact that references can be combined or modified does not render the resultant combination obvious in the absence of predictability to one of ordinary skill in the art. Because both Privas and De Laforcade are directed to a release of a fluid under pressure, such as an aerosol, there would have been no reasonable expectation of success in combining the features of either of these references in the manner suggested in the Office Action.

The Office Action is also improper because it proposes to rearrange the parts of the applied references to meet the claimed invention without providing the requisite reasoning why a person of ordinary skill in the art, without the benefit of Applicants' disclosure, would have rearranged the parts. None of the applied references suggests a container operable by manual depression of a depression rod or a depression shoulder, which enables rapid discharge action by rapid movement of either a depression rod or a depression shoulder portion.

In contrast, the Privas and De Laforcade devices discharge a fluid under pressure. The receiver of the Privas device is an aerosol can, which continues to discharge aerosol while a valve is opened by an actuating element. Similarly, De Laforcade teaches the discharge of a pressurized fluid which continues to discharge while a valve is opened by pivotal movement of a movable portion of the De Laforcade device about a hinge. In both the Privas and De Laforcade devices, repetitive manual depressions for an actuating element, button or movable member are not necessary. As such, there would have been no motivation to combine the teachings of Privas and De Laforcade in the manner suggested by the Office Action with any reasonable expectation of success, or any reasonable degree of predictability that such a

combination would achieve the objectives achieved by the subject matter of the pending claims.

Similarly, the combination of Stone and De Laforcade in the manner suggested in the Office Action fails. As described above, De Laforcade discloses a device that dispenses a fluid under pressure from a receiver that contains a pressurized fluid. The De Laforcade device discharges a fluid continuously during a depression of an actuating surface. There would have been no motivation to combine the features of Stone and De Laforcade to provide a container operable by manual depression of a depression rod or a depression shoulder which enables rapid discharge action by rapid movement of a depression rod or a depression shoulder portion. As such, there would have been no motivation to combine the teachings of Stone and De Laforcade in the manner suggested by the Office Action with any reasonable expectation of success, or any reasonable degree of predictability that such a combination would achieve the objectives achieved by the subject matter of the pending claims.

Additionally, it should be noted that claim 1 positively recites, among other features, a laminated container body having a neck portion, and including an outer layer and an inner layer delaminatable from the outer layer. The vertical up and down movement of the stem, cylindrical piston and comb, achieved by repetitive manual depression of the depression rod or shoulder portion, promotes delamination between the inner and outer layers. In this regard, the subject matter of the pending claims enables precise control of the amount of agent applied by manual depression of the depression rod. This is particularly advantageous because it is, for example, difficult to comb hair to which too much hair-dressing agent may have been applied. In aerosol containers, such as those disclosed in DeLaforcade, the aerosol is discharged automatically and rapidly. For this reason, it is reasonable to conclude that the precise control of an amount of agent applied, such as, for example, hair-dressing agent applied to hair, is not achievable with such a device. A specific objective in structuring the

subject matter of the pending claims as a laminated container, as positively recited, for example, in claim 1, is to achieve, among other objectives, smooth shrinkage or decompression of the inner container to promote easy depression of the stem, cylindrical piston, and comb to facilitate precise control of the hair dressing agent, the delamination of the inner layer tending to prevent a vacuum from being formed within the container.

For these reasons, no combination of the applied references would have suggested a container with a comb for applying a substance comprising a hollow comb having a shaft and one or more discharge orifices, and a stem extending from the shaft into a pump cylinder, the stem having a lower end portion to which a cylindrical piston is provided, the stem, the cylindrical piston, and the comb being biased upwardly and being vertically movable with respect to a laminated container body and a cap member, wherein the shaft has a depression rod for depressing the stem, the cylindrical piston and the comb, as positively recited in independent claims 1 and 2.

For at least the foregoing reasons, Applicants respectfully submit that Privas, Stone and De Laforcade are not combinable in the manner suggested by the Office Action, and any permissible combination of the applied references cannot reasonably be considered to have suggested the combinations of all of the features positively recited in at least independent claims 1 and 2. Further, claims 3-7 also would not have been suggested by any permissible combination of applied references for at least the respective dependence of these claims directly or indirectly on allowable base claims, as well as for the separately patentable subject matter that each of these claims recites.

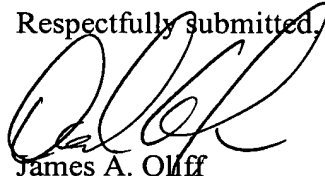
Accordingly, reconsideration and withdrawal of the rejections of claims 1-7 under 35 U.S.C. §103(a) as being unpatentable over Privas in view of De Laforcade or Stone in view of De Laforcade are respectfully requested.

Claim 8 is allowable over any combination of the applied references because it contains the allowable subject matter recited in claim 1.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-8 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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JAO:DAT/hjr

Attachments:

Petition for Extension of Time
Request for Continued Examination

Date: February 13, 2008

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